Contingency Contracting Training

Ethics, Fraud Indicators, Standards of Conduct, and Procurement Integrity

“Doing the Right Thing”

Chapter 1 in DCC Handbook

Current a/o 15 Aug

Overview

- Key Points
- General Principles
- Tenets of Government Service
- Conflicts of Interest
- Gift Prohibition
- Reporting of Gifts
- Combat Trafficking in Persons
- Identifying Fraud Indicators
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Key Points

- Ethics are vitally important, particularly in the contingency environment because of the cultural differences
- Strictly avoid any conflict of interest, or apparent conflict of interest
- CCO must not forget duty is to the US Government, DoD and customer…not the contractor
- CCO may not accept any gift because of official position and may not accept any gift from a contractor, a potential contractor, or a partnering contractor
- There are very limited exceptions to the gift prohibition; unavoidable violations must be documented and reported to counsel immediately
- DoD will not tolerate any form of human trafficking or forced labor by any of its contractors or contractor personnel
- If ever in doubt, contact the legal advisor

General Principles

- Biggest responsibilities as a CCO:
  - Effectively communicate customer's needs to the supplier
  - Establish a solid working relationship with customer, who may have competing interests. Remember, the CCO works for the US Government, not the contractor
- The Federal government has its own set of ethical rules, called "standards of conduct" found in regulations:
  - The Office of Government Ethics (5 CFR 2635)
  - Supplemented by DOD Regulation (5500.7-R), Joint Ethics Regulation (JER)

* *Integrity first - public service is a public trust* *

General Principles

- First, last, and throughout are core values
  - The obligations of Government service, and all of the subordinate rules, rest on very basic values
  - As leaders and decision-makers in our Department, it is important to recognize that leadership and ethics go hand-in-hand

- Keep core values in mind not only through this briefing, but more importantly, through normal work day, the ethics rules that follow will make more sense

Basic Obligations of Government Service

- As a public servant, CCO has certain unique ethical responsibilities
  - Every Federal employee (a term that includes military personnel) has a responsibility to the citizens of the United States to place loyalty to the Constitution, laws and ethical principles above private gain
  - Every employee shall respect and adhere to the 14 ethical principles set forth by the Office of Government Ethics (OGE) and the DOD

- CCO must not only comply with these rules, but must ensure subordinates follow the rules, too

The 14 Tenets of Government Service

1. You must place loyalty to the Constitution and the law ***above your private gain***
2. You shall not hold financial interests that ***conflict with*** your official duties
3. You shall not engage in financial transactions using ***nonpublic information*** or permit the release of such information for any other improper use
4. You ***shall not solicit or accept any gift*** from any person or entity seeking official action or doing business with DOD

The 14 Tenets of Government Service

5. You must put forth ***honest efforts*** in the performance of your duties
6. You shall not knowingly make unauthorized commitments or promises that bind the Government ***without authority***
7. You shall not use public office for ***private gain***
8. You shall ***act impartially*** and not give preferential treatment to any person or entity

The 14 Tenets of Government Service

9. You must ***protect and conserve Government property*** and use it only for authorized purposes
10. You shall not engage in, or seek, ***outside employment or activities*** that conflict with your official duties
11. You shall ***disclose fraud, waste, abuse and corruption*** to appropriate authorities
12. You must ***act in good faith*** in satisfying the obligations of citizenship (including paying just financial obligations and taxes)

The 14 Tenets of Government Service

13. You shall adhere to all laws that provide ***equal opportunity*** for all Americans regardless of race, color, religion, sex, national origin, age or handicap
14. You shall endeavor to ***avoid any actions*** *that create the appearance* of unethical conduct, as seen from the perspective of a reas

For further information, reference
5 CFR 2635.101

Conflicts of Interest

The most basic ethical principle: 18 USC §208

- An employee is prohibited from participating personally and substantially in an official capacity in any particular matter in which he (or any person whose interests are imputed to him) has a financial interest if the matter will have a direct and predictable effect on that interest

In other words…

- If CCO is officially involved in a matter that could affect personal financial interests, or those of someone related to or associated with, CCO must be removed from acting on that matter in an official capacity
- A closely-related rule: if official involvement creates even the *appearance* of a conflict of interest to a reasonable person, CCO must be removed from that matter or, at a minimum, seek legal advice

Conflicts of Interest

It is hard to overstate the importance of this basic rule

- The financial interests of a spouse, minor child, business investments, outside organizations (in which a position is “active” or hold office) or entities in which the CCO is seeking employment are all imputed to back to the CCO
- It is one of the very few areas of the law where the CCO does not have to be “guilty” to be in trouble – even looking guilty can land the CCO in trouble because…

Appearances count!

Conflicts of Interest

When conflicts arise, seek advice from an ethics counselor!

- Disqualification or recusal (stepping aside from decisions that could affect financial interests)
- Waivers of disqualification (continuing involvement, but only with full disclosure and permission from Agency officials)
- Divestiture (removing the financial interest that creates the conflict, which often involves selling the financial interest at issue)

Gift Prohibition

- As a Federal official, CCO may not accept gifts per FAR 3.101-2
- CCO may not solicit gifts from anyone, for any reason
  - That also means for others or for the US military services
- CCO may not accept gifts from "prohibited sources"
  - Per 5 CFR 2635.203(d), a "prohibited source" is one who does, or seeks, DOD business or one who could be substantially affected by CCO official decisions
  - CCO may not accept gifts because of official position as a Government official

Gift Prohibition

Common *exceptions* to the gift ban include:

- Gifts valued at $20 or less, per occasion
  - Up to $50 from the same source in a calendar year
- Gifts based on family relationships or personal friendships
  - This includes only established, long-standing relationships
- Certain social engagements (such as widely attended gatherings or personal social gatherings with friends)
- Awards connected to bona fide recognition programs
- Gifts or opportunities based on outside activities or employment (completely unrelated to CCO's government position)

Gift Prohibition

If in a foreign area, CCO may accept food, refreshments, or entertainment during meals or meetings, if:

- The US market value does not exceed the Dept. of State's maximum per diem allowance
- Guests include non-US citizens or foreign diplomats
- Attendance is part of official duties
- The gifts are not from foreign governments

Gift Prohibition

Anti-Kickback Act of 1996

- “Prohibits actual or attempted payments or offers to provide kickbacks, which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind, to include obtaining or rewarding favorable treatment”
- Giving or accepting a bribe is a crime punishable by fine and/or up to 10 years in prison

Reporting of Gifts

If the CCO receives a gift that cannot be accepted, he/she must do one of the following things:

- Return the item to the donor, or
- Pay the fair market value of the item, or
- If perishable (i.e., food or flowers), give the gift to a charity or share it within the office
  - Note: except for perishable items, CCO may not redirect the gift to a favorite charity

Reporting of Gifts

- If the contractor seems offended:
  - Accept the gift and safeguard it
  - Turn it over to counsel
  - Write a memo for the record mentioning legal advice was obtained
  - If perishable, give the gift to a charity or share it with co-workers
- Seek legal counsel early and often

Reporting of Gifts

- Employees who must file financial disclosure reports must report travel-related cash reimbursements or gifts totaling more than $285 from any one source, received by the employee, spouse or dependent children
- Reporting is done on OGE Form 450, Part V or on SF 278, Schedule B, Part II

Reporting of Gifts

Notwithstanding an exception, how will it be perceived if a CCO accepts a gift?

Accepting gifts can be more than a JER violation; they could be treated as a bribe or evidence of graft, which carry federal offenses!

Combat Trafficking in Persons

- Human trafficking is the act of recruiting, harboring, transporting, providing, or obtaining a person for labor services or commercial sex acts through force, fraud, or coercion, for the purpose of exploitation, involuntary servitude, peonage, debt bondage, or slavery.
  - Sex trafficking is defined as “the recruitment, harboring, transportation, provision, or obtaining a person for the purpose of a commercial sex act” as stated by FAR 22.1702
- The DoD will not tolerate any form of sex trafficking or forced labor.

Combat Trafficking in Persons

- It is the CCO's responsibility to maintain surveillance over contractor compliance with *Trafficking in Persons* requirements
- Immediate action should be taken to impose suitable remedies, including termination, on contractors that support or promote trafficking or fail to monitor the conduct of their employees and subcontractors with regard to trafficking in persons

- Visit http://ctip.defense.gov/ for further information

Identifying Fraud Indicators

Fraud is the misrepresentation of a material fact with the intent to deceive, which can include:

- Deliberate omission of material facts
- False or misleading representation
- A single act or a combination of circumstances
- The suppression of truth or the suggestion of what is false
- May occur by direct falsehood, by innuendo, by speech, by silence, by word of mouth, or by look or gesture

Identifying Fraud Indicators

- COs have an obligation to report any suspected violations or wrongdoing
- Provide basic fraud awareness, identification, prevention, and reporting training to:
  - Contracting Officer's Representatives (COR)
  - Quality Assurance Evaluators (QAE)
  - Field Ordering Officers
  - Government-wide commercial purchase card holders during their initial and refresher training classes

Identifying Fraud Indicators

Bribery - 18 USC 201(b)(1)

"(b) Whoever . . . . .

(1) directly or indirectly, . . ., offers . . . anything of value to any public official . . . with intent . . . . . .

(A)to influence any official act; . . . . .

shall be fined under this title or not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both, and may be disqualified from holding any office of honor, trust, or profit under the United States."

Identifying Fraud Indicators

Common fraud indicators:

- Frequent complaints by users of supplies or services
- Government estimates and contract award prices are consistently very close
- Contractor complaints of late payment by the agency
- Abnormal increase in consumption of fuel or supply items
- Failure to deobligate cancelled purchase orders
- Excessive number of invoice photocopies in file
- Less than adequate consideration

Identifying Fraud Indicators

Common Fraud Schemes

- Rigged specifications
- Unvarying patterns in small purchases
- Splitting large requirements
- Duplicate payment
- Overstatement of shipping weights
- Counterfeit parts
- Emotional bribery

Situations Enabling Fraud

- Failure to properly monitor contract performance
- No acquisition checks and balances
- Poorly defined specifications
- Poor physical security
- Receipt of items that cannot be traced to a valid requisition

Identifying Fraud Indicators

- Be aware of the contractors and vendors that are not allowed to do business with the government due to fraudulent or performance discrepancies
- CCOs have an obligation to report any suspected violations or wrongdoing to the appropriate chain of command – AFOSI, NCIS, CID, DCAA, DCMA, DCIS

DoD Fraud, Waste and Abuse Hotline

1-800-424-9098 or *hotline@dodig.mil*

www.dodig.mil/HOTLINE

Interacting with Contractor Employees

- A personal services contract obtains personnel by contract rather than by direct hire
- Daily interactions should not mimic those of a privileged relationship - these contractors are not government employees
- Act impartially and do not show preferential treatment or favoritism
- Personal relationships may appear as a conflict of interest

Interacting with Contractor Employees

CCO must not:

- Interfere in contractor-employee relations
- Allow work beyond the performance work statement
- Allow work prior to the obligation of funding
- Establish hours of duty or grant/deny leave
- Tell contractors who to hire or promote
- Reassign or discipline contractor employees

Interacting with Contractor Employees

However, limited authority is granted to acquire the services of experts, if:

- The duties are temporary
- It is advantageous to national defense
- DoD personnel with necessary skills aren't available
- Excepted appointment cannot be obtained
- A Nonpersonnel services contract is not practicable
- Any other determination required by statutes has been made

Checks and Balances

Checks and balances provide the ability to fulfill obligations and to prevent an opportunity for fraudulent activity

1. Protect the taxpayer by ensuring sound judgment in the spending of taxpayer dollars
2. Protect the warrior by providing goods, services, or awards that are sufficient for their needs
3. Protect yourself by having all the documentation to back up your sound judgment and acquisitions

Final Thoughts

We are a nation at war

- Armed Forces personnel are in harm's way every day
- They, and their families, trust you to adhere to our core values in your every decision
- You, as a senior official or key support person, establish the ethical climate
- It is truly a time for service before self

Final Thoughts

What can the CCO do?

- Heed the ethics rules – no matter how minor they seem
- Lead by example – a leader is the most effective resource in the ethics program
- Encourage ethics awareness and stress compliance within area of responsibility
- When explaining decisions, incorporate the moral and ethical considerations -- explain why they matter
- Encourage personnel to speak up when they believe ethics rules are being compromised or ignored
- Seek legal guidance early and often

Agile Contracting Support…Anytime… Anywhere